

AMENDED IN SENATE APRIL 10, 2013

SENATE BILL

No. 744

Introduced by Senator Lara

February 22, 2013

An act to amend Sections 1981, 1983, 48660.1, 48662, and 48918 of, to add Sections 1981.5 and 48662.5 to, and to repeal Section 1981.2 of, the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

SB 744, as amended, Lara. Pupils: involuntary transfer: county community schools and community day schools.

(1) Existing law authorizes a county board of education to establish and maintain one or more community schools into which the county board of education may enroll specified pupils, including, but not limited to, pupils who are expelled for specified reasons, referred as the result of the recommendation by a school attendance review board, probation referred, or homeless children.

This bill would revise the list of pupils who may be *involuntarily* enrolled in a county community school to limit the kind of probation referrals and remove pupils who are referred as the result of the recommendation by a school attendance review board and homeless children. *The bill would allow enrollment of certain other pupils in a county community school with the consent of the pupil's parent or guardian.* The bill would authorize ~~a pupil to challenge a certain probation referral~~ *referrals* to a county community school to ~~the be challenged in juvenile court and request enrollment in another school.~~

(2) Existing law requires a county community school to prescribe an individually planned educational program based on an educational assessment for each pupil. Existing law requires the course of study of

a county community school to be adopted by the county board of education to enable each pupil to continue academic work leading to the completion of a regular high school program.

This bill would require an individually planned educational program to include, but not be limited to, specified services. ~~The bill would require a county community school to also provide supplemental instruction to pupils who do not demonstrate sufficient progress toward passing the high school exit examination.~~

(3) Existing law authorizes the governing board of a school district to establish one or more community day schools for pupils in any of kindergarten and grades 1 to 12, inclusive. Existing law authorizes the governing board of a school district to assign a pupil to a community day school only if the pupil meets specified conditions, including, but not limited to, being referred by a school attendance review board or other district-level referral process and being probation referred pursuant to specified law.

This bill would revise ~~that~~ *the list of conditions pupils who may be involuntarily enrolled in a community day school* to limit the kind of probation referrals and remove a referral by a school attendance review board or other district level referral process. *The bill would allow enrollment of certain other pupils in a community day school with the consent of the pupil's parent or guardian.* The bill would authorize ~~a pupil to challenge a certain probation referral referrals~~ to a community day school ~~to be challenged in juvenile court and request enrollment in another school.~~

(4) Existing law states the intent of the Legislature that community day schools include specified program components, including, but not limited to, individualized instruction and assessment.

This bill would ~~provide that require~~ individualized instruction and assessment ~~includes to include~~ specified services ~~and would add an additional program component relating to courses of study that enable each pupil to continue academic work leading to the completion of a regular high school program.~~

(5) This bill would provide a pupil *who is involuntarily* enrolled in a county community school or a community day school the right to reenroll in his or her former school or another comprehensive school ~~no later than 6 months after initial placement in the school, or immediately after completion of the expulsion period, whichever comes later, as long as the reenrollment is not inconsistent with any applicable conditions of the pupil's probation or parole, as appropriate, period or~~

court-ordered placement, and would require the pupil to be informed of that date, thereby imposing a state-mandated local program. The bill would prohibit the pupil from being denied this reenrollment based on his or her failure to comply with any additional criteria imposed by a county board of education or school district beyond the terms of the initial or subsequent expulsion order. The bill would prohibit the county board of education and the school district from adding additional academic or behavioral criteria or conditions that would extend the duration of the placement of a pupil in a county community school or a community day school beyond the terms of the initial or subsequent expulsion order.

(6) Existing law requires the governing board of each school district to establish rules and regulations governing procedures for the expulsion of pupils. Existing law requires expulsion proceedings to be terminated and the pupil to be immediately reinstated and permitted to return to a classroom instructional program, any other instructional program, a rehabilitation program, or any combination of these programs if a hearing officer or administrative panel decides not to recommend expulsion.

This bill would require that the pupil be permitted to return only to the classroom instructional program from which the expulsion referral was made. *The bill would allow a parent or guardian to request another school option in writing.*

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1981 of the Education Code is amended
- 2 to read:
- 3 1981. The county board of education may enroll in a
- 4 community school pupils who are any of the following:

1 (a) Expelled from a school district for any reason specified in
2 Section 48915.

3 (b) *Recommended to attend by a school attendance review board*
4 *with the written consent of the parent or guardian. No pupil shall*
5 *be required to attend a county community school based on the*
6 *recommendation of the school attendance review board. That*
7 *attendance is voluntary and parental consent may be revoked at*
8 *any time.*

9 ~~(b) Pupils whose~~

10 (c) *Pupils whose school districts of attendance have, at the*
11 *request of the pupil's parent or guardian, approved the pupil's*
12 *enrollment in a county community school, subject to the*
13 *following:*

14 (1) *A pupil shall not be enrolled in a county community school*
15 *pursuant to this subdivision unless the school district has made a*
16 *finding that such a placement will promote the educational interests*
17 *of the pupil and provided written notice of the finding to the pupil's*
18 *parent or guardian, including notice that consent to that placement*
19 *is voluntary and may be revoked at any time.*

20 (2) *A parent or guardian of a pupil enrolled in a county*
21 *community school pursuant to this subdivision may revoke that*
22 *request and consent to the placement at any time, and,*
23 *notwithstanding subdivision (a) of Section 1981.5, the pupil shall*
24 *be immediately reenrolled in the school that the pupil attended at*
25 *the time of the referral, or in another comprehensive school.*

26 (e)

27 (d) (1) ~~Probation referred~~ *On probation, with or without the*
28 *supervision of a probation officer and consistent with an order of*
29 *a juvenile court, who are considered to be wards of the court under*
30 *Sections 601 and 602 of the Welfare and Institutions Code and*
31 *ordered placed pursuant to Sections 602 725, 729.2, and 654 791*
32 *of, and paragraph (2) of subdivision (a) of Section 727 of, the*
33 *Welfare and Institutions Code.*

34 ~~(2) On probation or parole and not in attendance in any school.~~

35 ~~(3) Referrals to a community school pursuant to this subdivision~~
36 ~~shall be consistent with Section 48645.5. A pupil may challenge~~
37 ~~the referral to the juvenile court and request enrollment in another~~
38 ~~school.~~

1 (2) Under the supervision of a probation officer, with the consent
2 of the minor and the minor's parent or guardian, pursuant to
3 Section 654 of the Welfare and Institutions Code.

4 (3) Under the supervision of a probation officer pursuant to
5 Section 726 and paragraph (3) of subdivision (a) of Section 727
6 of the Welfare and Institutions Code with the consent of the pupil's
7 parent, guardian, or responsible adult appointed by the juvenile
8 court to make educational decisions for the pupil. The enrollment
9 of a minor covered by this paragraph in a county community school
10 shall be consistent with paragraph (2) of subdivision (c) of Section
11 726 of the Welfare and Institutions Code, which provides that all
12 educational and school placement decisions shall seek to ensure
13 that the youth is in the least restrictive educational program, has
14 access to the academic resources, services, and extracurricular
15 and enrichment activities that are available to all pupils, and are
16 based on the best interests of the minor.

17 (4) Unless specifically ordered by a juvenile court, nothing in
18 this subdivision shall be construed to conflict with the existing
19 rights of a parent or guardian or responsible adult appointed by
20 the juvenile court pursuant to Section 726 of the Welfare and
21 Institutions Code to make educational placement decisions for the
22 minor.

23 (5) Enrollment in a county community school pursuant to this
24 subdivision shall be consistent with Section 48645.5.

25 (6) A parent, guardian, or responsible adult may challenge in
26 juvenile court any placement pursuant to paragraphs (1) to (3),
27 inclusive, that conflicts with the parent's, guardian's, or
28 responsible adult's right to make a decision to enroll or not to
29 enroll the pupil in a community school.

30 SEC. 2. Section 1981.2 of the Education Code is repealed.

31 SEC. 3. Section 1981.5 is added to the Education Code, to
32 read:

33 1981.5. (a) A pupil who is involuntarily enrolled in a county
34 community school pursuant to subdivision (a) of, or paragraph
35 (1) of subdivision (d) of, Section 1981 shall have the right to
36 reenroll in his or her former school or another comprehensive
37 school ~~no later than six months after initial placement in the~~
38 ~~community school, or immediately after completion of the~~
39 ~~expulsion period, whichever comes later, as long as the~~
40 ~~reenrollment is not inconsistent with any applicable conditions of~~

1 ~~the pupil's probation or parole period or court-ordered placement.~~
 2 *Upon enrollment in the county community school, the pupil shall*
 3 *be informed of the date when he or she may reenroll in his or her*
 4 *former school or another comprehensive school and the school*
 5 *district shall implement a process to transfer the pupil from the*
 6 *county community school, which may include, but is not limited*
 7 *to, ensuring proper transfer of credits, records, and grades.*

8 (b) A pupil shall not be denied reenrollment in his or her former
 9 school or another comprehensive school based on the pupil's failure
 10 to comply with any additional criteria imposed by a county board
 11 of education beyond the terms of ~~an~~ *the initial order or any*
 12 *subsequent order* to expel issued pursuant to Section 48916.

13 (c) The county board of education shall not add additional
 14 academic or behavioral criteria or conditions that would extend
 15 the duration of the placement of a pupil in a *county* community
 16 school beyond the terms of ~~an~~ *the initial order or any subsequent*
 17 *order* to expel issued pursuant to Section 48916.

18 SEC. 4. Section 1983 of the Education Code is amended to
 19 read:

20 1983. (a) Pupils enrolled in county community schools shall
 21 be assigned to classes or programs deemed most appropriate for
 22 reinforcing or reestablishing educational development.

23 (b) These classes or programs may include, but need not be
 24 limited to, basic educational skill development, on-the-job training,
 25 *school credit recovery assistance*, tutorial assistance, and individual
 26 guidance activities.

27 (c) *To the extent that independent study is determined to satisfy*
 28 *the individually planned education program described in*
 29 *subdivision (d) for a pupil attending a county community school,*
 30 *it shall meet all the requirements of Section 51745 and following,*
 31 *including the requirement that the program be voluntary.*

32 (e)

33 (d) An individually planned educational program based upon
 34 an educational assessment shall be prescribed for each pupil. ~~This~~
 35 ~~program shall include, but not be limited to, all of the following:~~

36 (1) ~~Efforts to continue a pupil's relationships with school~~
 37 ~~personnel, including counselors from a pupil's former school.~~

38 (2) ~~Any medical or mental health needs.~~

39 (3) ~~Access to appropriate services and programs specified in a~~
 40 ~~pupil's individualized education program: pupil. If the educational~~

1 *assessment or rehabilitation plan shows that the pupil needs any*
 2 *of the following, the pupils shall be enrolled in or have access to*
 3 *these programs: counseling, mental health counseling, or other*
 4 *support services, college preparatory and A-G classes, access to*
 5 *services necessary to transition a pupil back to his or her prior*
 6 *school or to another comprehensive school, peer mediation or*
 7 *peace-building, supplemental services to assist with passage of*
 8 *the high school exit examination, or extracurricular or other*
 9 *enrichment activities.*

10 ~~(4) Efforts to address the language access needs of pupils~~
 11 ~~identified as English learners.~~

12 ~~(d)~~

13 (e) The course of study of a county community school shall be
 14 adopted by the county board of education and shall enable each
 15 pupil to continue academic work leading to the completion of a
 16 regular high school program, ~~including access to college~~
 17 ~~preparatory classes. Supplemental instruction shall also be provided~~
 18 ~~to pupils who do not demonstrate sufficient progress toward~~
 19 ~~passing the high school exit examination required pursuant to~~
 20 ~~Section 60851.~~

21 (f) A county board of education operating a county community
 22 school shall ensure that assessments in all areas of suspected
 23 disability and appropriate services and programs specified in a
 24 pupil's individualized education program are provided in
 25 compliance with all applicable state and federal laws and
 26 regulatory provisions.

27 (g) A county board of education operating a county community
 28 school shall ensure that appropriate services and programs
 29 designed to address the language needs of pupils identified as
 30 English learners are provided in compliance with all applicable
 31 state and federal laws and regulatory provisions.

32 SEC. 5. Section 48660.1 of the Education Code is amended to
 33 read:

34 48660.1. (a) It is the intent of the Legislature that school
 35 districts operating community day schools, to the extent possible,
 36 include the following program components:

37 (a)

38 (1) School district cooperation with the county office of
 39 education, law enforcement, probation, and human services
 40 agencies personnel who work with at-risk youth.

- 1 ~~(b)~~
- 2 (2) Low pupil-teacher ratio.
- 3 ~~(e)~~
- 4 (3) Individualized instruction and assessment, which includes
- 5 all of the following: *assessment.*
- 6 ~~(1) Any medical or mental health needs.~~
- 7 ~~(2) Appropriate services and programs specified in a pupil's~~
- 8 ~~individualized education program.~~
- 9 ~~(3) Instruction to address the language access needs of pupils~~
- 10 ~~identified as English learners.~~
- 11 ~~(d)~~
- 12 (4) Maximum collaboration with school district support service
- 13 resources, including, but not limited to, school counselors and
- 14 psychologists, academic counselors, and pupil discipline personnel.
- 15 ~~(e)~~
- 16 (5) A course of study that enables each pupil to continue
- 17 academic work leading to the completion of a regular high school
- 18 ~~program, including access to college preparatory classes.~~
- 19 ~~Supplemental instruction should also be provided to pupils who~~
- 20 ~~do not demonstrate sufficient progress toward passing the high~~
- 21 ~~school exit examination required pursuant to Section 60851.~~
- 22 ~~program.~~
- 23 ***(b) If the educational assessment or rehabilitation plan shows***
- 24 ***that the pupil needs any of the following, the pupil shall be enrolled***
- 25 ***in or have access to these programs: counseling, mental health***
- 26 ***counseling, or other support services, college preparatory and***
- 27 ***A-G classes, access to services necessary to transition a pupil back***
- 28 ***to his or her prior school or to another comprehensive school,***
- 29 ***peer mediation or peacebuilding, supplemental services to assist***
- 30 ***with passage of the high school exit examination, or extracurricular***
- 31 ***or other enrichment activities.***
- 32 ***(c) A school district operating a community day school shall***
- 33 ***ensure that assessments in all areas of suspected disability and***
- 34 ***appropriate services and programs specified in a pupil's***
- 35 ***individualized education program are provided in compliance with***
- 36 ***all applicable state and federal laws and regulatory provisions.***
- 37 ***(d) A school district operating a community day school shall***
- 38 ***ensure that appropriate services and programs designed to address***
- 39 ***the language needs of pupils identified as English learners are***

1 *provided in compliance with all applicable state and federal laws*
2 *and regulatory provisions.*

3 SEC. 6. Section 48662 of the Education Code is amended to
4 read:

5 ~~48662. (a) The governing board of a school district that~~
6 ~~establishes a community day school shall adopt policies that~~
7 ~~provide procedures for the involuntary transfer of pupils to a~~
8 ~~community day school.~~

9 (b)

10 48662. (a) A pupil may be ~~assigned~~ *involuntarily transferred*
11 *to a community day school by a school district* only if he or she
12 meets one or more of the following conditions:

13 (1) The pupil is expelled for any reason.

14 (2) The pupil is *on probation* ~~referred pursuant to Section 602~~
15 ~~of the Welfare and Institutions Code. This referral shall be~~
16 ~~consistent with Section 48645.5. A pupil may challenge the referral~~
17 ~~to the juvenile court and request enrollment in another school with~~
18 ~~or without the supervision of a probation officer and consistent~~
19 ~~with an order of a juvenile court, and is considered to be a ward~~
20 ~~of the court under Sections 601 and 602 of the Welfare and~~
21 ~~Institutions Code and is ordered placed pursuant to Sections 725,~~
22 ~~729.2, and 791 of, and paragraph (2) of subdivision (a) of Section~~
23 ~~727 of, the Welfare and Institutions Code.~~

24 (b) A pupil may be voluntarily transferred to a community day
25 school only if he or she meets one of the following conditions:

26 (1) *Recommended to attend by a school attendance review board*
27 *with the written consent of the parent or guardian. No pupil shall*
28 *be required to attend a community school based on the*
29 *recommendation of the school attendance review board. That*
30 *attendance is voluntary and parental consent may be revoked at*
31 *any time.*

32 (2) *Under the supervision of a probation officer, with the consent*
33 *of the minor and the minor's parent or guardian, pursuant to*
34 *Section 654 of the Welfare and Institutions Code.*

35 (3) *Under the supervision of a probation officer pursuant to*
36 *Section 726 of, and paragraph (3) of subdivision (a) of Section*
37 *727 of, the Welfare and Institutions Code with the consent of the*
38 *pupil's parent, guardian, or responsible adult appointed by the*
39 *juvenile court to make educational decisions for the pupil. The*
40 *enrollment of a minor covered by this paragraph in a community*

1 day school shall be consistent with paragraph (2) of subdivision
2 (c) of Section 726 of the Welfare and Institutions Code, which
3 provides that all educational and school placement decisions shall
4 seek to ensure that the youth is in the least restrictive educational
5 program, has access to the academic resources, services, and
6 extracurricular and enrichment activities that are available to all
7 pupils, and that the decisions are based on the best interests of the
8 minor.

9 (4) The parent or guardian of the pupil has approved or
10 requested the pupil's placement in a community day school.

11 (A) A pupil shall not be enrolled in a community day school
12 pursuant to this subdivision unless the school district has made a
13 finding that the placement will promote the educational interests
14 of the pupil and provided written notice of those findings to the
15 pupil's parent or guardian, including notice that consent to such
16 a placement is voluntary and may be revoked at any time.

17 (B) A parent or guardian of a pupil enrolled in a community
18 day school pursuant to this subdivision may revoke that request
19 and consent to the placement at any time, and, notwithstanding
20 subdivision (a) of Section 48662.5, the pupil shall be immediately
21 reenrolled in the school the pupil attended at the time of the
22 referral, or in another comprehensive school.

23 ~~(3)~~

24 (c) First priority for assignment to a community day school shall
25 be given to a pupil expelled pursuant to subdivision (d) of Section
26 48915, second priority shall be given to pupils expelled for any
27 other reasons, and third priority shall be given for placement to all
28 other pupils pursuant to this section, unless there is an agreement
29 that the county superintendent of schools shall serve any of these
30 pupils.

31 (d) Unless specifically ordered by a juvenile court, nothing in
32 this section shall be construed to conflict with the existing rights
33 of a parent or guardian or responsible adult appointed by the
34 juvenile court pursuant to Section 726 of the Welfare and
35 Institutions Code to make educational placement decisions for the
36 minor.

37 (e) Enrollment in a community day school pursuant to this
38 section shall be consistent with Section 48645.5.

39 (f) A parent, guardian, or responsible adult may challenge in
40 juvenile court any placement pursuant to paragraph (2) of

1 *subdivision (a) or paragraph (2) or (3) of subdivision (b) that*
2 *conflicts with the parent's, guardian's, or responsible adult's right*
3 *to make a decision to enroll or not to enroll the pupil in a*
4 *community day school.*

5 SEC. 7. Section 48662.5 is added to the Education Code, to
6 read:

7 48662.5. (a) A pupil who is *involuntarily* enrolled in a
8 community day school shall have the right to reenroll in his or her
9 former school or another comprehensive school ~~no later than six~~
10 ~~months after initial placement in the community day school, or~~
11 ~~immediately after completion of the expulsion period, whichever~~
12 ~~comes later, as long as the reenrollment is not inconsistent with~~
13 ~~any applicable conditions of the pupil's probation period or the~~
14 ~~court-ordered placement. Upon that involuntary enrollment in the~~
15 ~~community day school, the pupil shall be informed of the date when~~
16 ~~he or she may reenroll in his or her former school or another~~
17 ~~comprehensive school and the school district shall implement a~~
18 ~~process to transfer the pupil from the community day school, which~~
19 ~~may include, but is not limited to, ensuring proper transfer of~~
20 ~~credits, records, and grades.~~

21 (b) A pupil shall not be denied reenrollment in his or her former
22 school or another comprehensive school based on the pupil's failure
23 to comply with any additional criteria imposed by a school district
24 beyond the terms of an *initial or subsequent* order to expel issued
25 pursuant to Section 48916.

26 (c) The school district shall not add additional academic or
27 behavioral criteria or conditions that would extend the duration of
28 the placement of a pupil in a community day school beyond the
29 terms of an *initial or subsequent* order to expel issued pursuant to
30 Section 48916.

31 (d) Any school created for the purpose of enrolling pupils that
32 may be assigned to a community day school pursuant to Section
33 48662 shall follow the same procedures for the involuntary transfer
34 of pupils to a community day school set forth in this article.

35 SEC. 8. Section 48918 of the Education Code is amended to
36 read:

37 48918. The governing board of each school district shall
38 establish rules and regulations governing procedures for the
39 expulsion of pupils. These procedures shall include, but are not
40 necessarily limited to, all of the following:

1 (a) (1) The pupil shall be entitled to a hearing to determine
2 whether the pupil should be expelled. An expulsion hearing shall
3 be held within 30 schooldays after the date the principal or the
4 superintendent of schools determines that the pupil has committed
5 any of the acts enumerated in Section 48900, unless the pupil
6 requests, in writing, that the hearing be postponed. The adopted
7 rules and regulations shall specify that the pupil is entitled to at
8 least one postponement of an expulsion hearing, for a period of
9 not more than 30 calendar days. Any additional postponement may
10 be granted at the discretion of the governing board.

11 (2) Within 10 schooldays after the conclusion of the hearing,
12 the governing board shall decide whether to expel the pupil, unless
13 the pupil requests in writing that the decision be postponed. If the
14 hearing is held by a hearing officer or an administrative panel, or
15 if the governing board does not meet on a weekly basis, the
16 governing board shall decide whether to expel the pupil within 40
17 schooldays after the date of the pupil's removal from his or her
18 school of attendance for the incident for which the recommendation
19 for expulsion is made by the principal or the superintendent, unless
20 the pupil requests in writing that the decision be postponed.

21 (3) If compliance by the governing board with the time
22 requirements for the conducting of an expulsion hearing under this
23 subdivision is impracticable during the regular school year, the
24 superintendent of schools or the superintendent's designee may,
25 for good cause, extend the time period for the holding of the
26 expulsion hearing for an additional five schooldays. If compliance
27 by the governing board with the time requirements for the
28 conducting of an expulsion hearing under this subdivision is
29 impractical due to a summer recess of governing board meetings
30 of more than two weeks, the days during the recess period shall
31 not be counted as schooldays in meeting the time requirements.
32 The days not counted as schooldays in meeting the time
33 requirements for an expulsion hearing because of a summer recess
34 of governing board meetings shall not exceed 20 schooldays, as
35 defined in subdivision (c) of Section 48925, and unless the pupil
36 requests in writing that the expulsion hearing be postponed, the
37 hearing shall be held not later than 20 calendar days before the
38 first day of school for the school year. Reasons for the extension
39 of the time for the hearing shall be included as a part of the record
40 at the time the expulsion hearing is conducted. Upon the

1 commencement of the hearing, all matters shall be pursued and
2 conducted with reasonable diligence and shall be concluded without
3 any unnecessary delay.

4 (b) Written notice of the hearing shall be forwarded to the pupil
5 at least 10 calendar days before the date of the hearing. The notice
6 shall include all of the following:

7 (1) The date and place of the hearing.

8 (2) A statement of the specific facts and charges upon which
9 the proposed expulsion is based.

10 (3) A copy of the disciplinary rules of the school district that
11 relate to the alleged violation.

12 (4) A notice of the parent, guardian, or pupil's obligation
13 pursuant to subdivision (b) of Section 48915.1.

14 (5) Notice of the opportunity for the pupil or the pupil's parent
15 or guardian to appear in person or to be represented by legal
16 counsel or by a nonattorney adviser, to inspect and obtain copies
17 of all documents to be used at the hearing, to confront and question
18 all witnesses who testify at the hearing, to question all other
19 evidence presented, and to present oral and documentary evidence
20 on the pupil's behalf, including witnesses. In a hearing in which
21 a pupil is alleged to have committed or attempted to commit a
22 sexual assault as specified in subdivision (n) of Section 48900 or
23 committing a sexual battery as defined in subdivision (n) of Section
24 48900, a complaining witness shall be given five days' notice
25 before being called to testify, and shall be entitled to have up to
26 two adult support persons, including, but not limited to, a parent,
27 guardian, or legal counsel, present during their testimony. Before
28 a complaining witness testifies, support persons shall be
29 admonished that the hearing is confidential. This subdivision shall
30 not preclude the person presiding over an expulsion hearing from
31 removing a support person whom the presiding person finds is
32 disrupting the hearing. If one or both of the support persons is also
33 a witness, the provisions of Section 868.5 of the Penal Code shall
34 be followed for the hearing. This section does not require a pupil
35 or the pupil's parent or guardian to be represented by legal counsel
36 or by a nonattorney adviser at the hearing.

37 (A) For purposes of this section, "legal counsel" means an
38 attorney or lawyer who is admitted to the practice of law in
39 California and is an active member of the State Bar of California.

1 (B) For purposes of this section, “nonattorney advisor” means
2 an individual who is not an attorney or lawyer, but who is familiar
3 with the facts of the case, and has been selected by the pupil or
4 pupil’s parent or guardian to provide assistance at the hearing.

5 (c) (1) Notwithstanding Section 35145, the governing board
6 shall conduct a hearing to consider the expulsion of a pupil in a
7 session closed to the public, unless the pupil requests, in writing,
8 at least five days before the date of the hearing, that the hearing
9 be conducted at a public meeting. Regardless of whether the
10 expulsion hearing is conducted in a closed or public session, the
11 governing board may meet in closed session for the purpose of
12 deliberating and determining whether the pupil should be expelled.

13 (2) If the governing board or the hearing officer or administrative
14 panel appointed under subdivision (d) to conduct the hearing admits
15 any other person to a closed deliberation session, the parent or
16 guardian of the pupil, the pupil, and the counsel of the pupil also
17 shall be allowed to attend the closed deliberations.

18 (3) If the hearing is to be conducted at a public meeting, and
19 there is a charge of committing or attempting to commit a sexual
20 assault as defined in subdivision (n) of Section 48900 or
21 committing a sexual battery as defined in subdivision (n) of Section
22 48900, a complaining witness shall have the right to have his or
23 her testimony heard in a session closed to the public when
24 testifying at a public meeting would threaten serious psychological
25 harm to the complaining witness and there are no alternative
26 procedures to avoid the threatened harm, including, but not limited
27 to, videotaped deposition or contemporaneous examination in
28 another place communicated to the hearing room by means of
29 closed-circuit television.

30 (d) Instead of conducting an expulsion hearing itself, the
31 governing board may contract with the county hearing officer, or
32 with the Office of Administrative Hearings ~~of the State of~~
33 ~~California~~ pursuant to Chapter 14 (commencing with Section
34 27720) of Part 3 of Division 2 of Title 3 of the Government Code
35 and Section 35207, for a hearing officer to conduct the hearing.
36 The governing board may also appoint an impartial administrative
37 panel of three or more certificated persons, none of whom is a
38 member of the board or employed on the staff of the school in
39 which the pupil is enrolled. The hearing shall be conducted in
40 accordance with all of the procedures established under this section.

1 (e) Within three schooldays after the hearing, the hearing officer
2 or administrative panel shall determine whether to recommend the
3 expulsion of the pupil to the governing board. If the hearing officer
4 or administrative panel decides not to recommend expulsion, the
5 expulsion proceedings shall be terminated and the pupil
6 immediately shall be reinstated and permitted to return to the
7 classroom instructional program from which the expulsion referral
8 was made, *unless the parent or guardian of the pupil requests*
9 *another school option in writing*. The decision not to recommend
10 expulsion shall be final.

11 (f) (1) If the hearing officer or administrative panel recommends
12 expulsion, findings of fact in support of the recommendation shall
13 be prepared and submitted to the governing board. All findings of
14 fact and recommendations shall be based solely on the evidence
15 adduced at the hearing. If the governing board accepts the
16 recommendation calling for expulsion, acceptance shall be based
17 either upon a review of the findings of fact and recommendations
18 submitted by the hearing officer or panel or upon the results of
19 any supplementary hearing conducted pursuant to this section that
20 the governing board may order.

21 (2) The decision of the governing board to expel a pupil shall
22 be based upon substantial evidence relevant to the charges adduced
23 at the expulsion hearing or hearings. Except as provided in this
24 section, no evidence to expel shall be based solely upon hearsay
25 evidence. The governing board or the hearing officer or
26 administrative panel may, upon a finding that good cause exists,
27 determine that the disclosure of either the identity of a witness or
28 the testimony of that witness at the hearing, or both, would subject
29 the witness to an unreasonable risk of psychological or physical
30 harm. Upon this determination, the testimony of the witness may
31 be presented at the hearing in the form of sworn declarations that
32 shall be examined only by the governing board or the hearing
33 officer or administrative panel. Copies of these sworn declarations,
34 edited to delete the name and identity of the witness, shall be made
35 available to the pupil.

36 (g) A record of the hearing shall be made. The record may be
37 maintained by any means, including electronic recording, so long
38 as a reasonably accurate and complete written transcription of the
39 proceedings can be made.

1 (h) (1) Technical rules of evidence shall not apply to the
2 hearing, but relevant evidence may be admitted and given probative
3 effect only if it is the kind of evidence upon which reasonable
4 persons are accustomed to rely in the conduct of serious affairs.
5 A decision of the governing board to expel shall be supported by
6 substantial evidence showing that the pupil committed any of the
7 acts enumerated in Section 48900.

8 (2) In hearings that include an allegation of committing or
9 attempting to commit a sexual assault as defined in subdivision
10 (n) of Section 48900 or committing a sexual battery as defined in
11 subdivision (n) of Section 48900, evidence of specific instances,
12 of a complaining witness' prior sexual conduct is to be presumed
13 inadmissible and shall not be heard absent a determination by the
14 person conducting the hearing that extraordinary circumstances
15 exist requiring the evidence be heard. Before the person conducting
16 the hearing makes the determination on whether extraordinary
17 circumstances exist requiring that specific instances of a
18 complaining witness' prior sexual conduct be heard, the
19 complaining witness shall be provided notice and an opportunity
20 to present opposition to the introduction of the evidence. In the
21 hearing on the admissibility of the evidence, the complaining
22 witness shall be entitled to be represented by a parent, guardian,
23 legal counsel, or other support person. Reputation or opinion
24 evidence regarding the sexual behavior of the complaining witness
25 is not admissible for any purpose.

26 (i) (1) Before the hearing has commenced, the governing board
27 may issue subpoenas at the request of either the superintendent of
28 schools or the superintendent's designee or the pupil, for the
29 personal appearance of percipient witnesses at the hearing. After
30 the hearing has commenced, the governing board or the hearing
31 officer or administrative panel may, upon request of either the
32 county superintendent of schools or the superintendent's designee
33 or the pupil, issue subpoenas. All subpoenas shall be issued in
34 accordance with Sections 1985, 1985.1, and 1985.2 of the Code
35 of Civil Procedure. Enforcement of subpoenas shall be done in
36 accordance with Section 11455.20 of the Government Code.

37 (2) Any objection raised by the superintendent of schools or the
38 superintendent's designee or the pupil to the issuance of subpoenas
39 may be considered by the governing board in closed session, or in
40 open session, if so requested by the pupil before the meeting. Any

1 decision by the governing board in response to an objection to the
2 issuance of subpoenas shall be final and binding.

3 (3) If the governing board, hearing officer, or administrative
4 panel determines, in accordance with subdivision (f), that a
5 percipient witness would be subject to an unreasonable risk of
6 harm by testifying at the hearing, a subpoena shall not be issued
7 to compel the personal attendance of that witness at the hearing.
8 However, that witness may be compelled to testify by means of a
9 sworn declaration as provided for in subdivision (f).

10 (4) Service of process shall be extended to all parts of the state
11 and shall be served in accordance with Section 1987 of the Code
12 of Civil Procedure. All witnesses appearing pursuant to subpoena,
13 other than the parties or officers or employees of the state or any
14 political subdivision thereof, shall receive fees, and all witnesses
15 appearing pursuant to subpoena, except the parties, shall receive
16 mileage in the same amount and under the same circumstances as
17 prescribed for witnesses in civil actions in a superior court. Fees
18 and mileage shall be paid by the party at whose request the witness
19 is subpoenaed.

20 (j) Whether an expulsion hearing is conducted by the governing
21 board or before a hearing officer or administrative panel, final
22 action to expel a pupil shall be taken only by the governing board
23 in a public session. Written notice of any decision to expel or to
24 suspend the enforcement of an expulsion order during a period of
25 probation shall be sent by the superintendent of schools or his or
26 her designee to the pupil or the pupil's parent or guardian and shall
27 be accompanied by all of the following:

28 (1) Notice of the right to appeal the expulsion to the county
29 board of education.

30 (2) Notice of the education alternative placement to be provided
31 to the pupil during the time of expulsion.

32 (3) Notice of the obligation of the parent, guardian, or pupil
33 under subdivision (b) of Section 48915.1, upon the pupil's
34 enrollment in a new school district, to inform that district of the
35 pupil's expulsion.

36 (k) (1) The governing board shall maintain a record of each
37 expulsion, including the cause for the expulsion. Records of
38 expulsions shall be a nonprivileged, disclosable public record.

39 (2) The expulsion order and the causes for the expulsion shall
40 be recorded in the pupil's mandatory interim record and shall be

1 forwarded to any school in which the pupil subsequently enrolls
2 upon receipt of a request from the admitting school for the pupil's
3 school records.

4 SEC. 9. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

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